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ABSTRACT

This paper reviews how the No Child Left Behind Act of 2001 (NCLB) will operate regarding different groups of students and schools, examining factors that could delay or dilute its guarantee of educational accountability for the academic achievement of all children. It discusses such issues as: what kinds of tests must be used and when, who must be tested and who is exempted, whose scores count and how they are reported, and how the NCLB's testing and adequate yearly progress requirements apply to private, home, and charter schools. The first section provides context on the law, its intent, and its implementation to date. The second section discusses who gets tested and when and whose scores count for accountability purposes, highlighting students with special needs. The third section examines measurement of school performance and applicability of accountability provisions to different types of schools. The final section concludes that the NCLB is a solid step toward establishing a national commitment to the high academic achievement of all children, including students with special needs and those with limited English proficiency. It also finds that the law must be well implemented, that a variety of stakeholders must be included in the regulatory and enforcement processes, and that the Department of Education must expand and strengthen the quality of data collected for accountability purposes. (SM)

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No Child Left Behind: Who Is Included In New Federal Accountability Requirements?[1]

Richard J. Wenning, Paul A. Herdman, Nelson Smith

INTRODUCTION

"Leave no child behind." Powerful in its simplicity, daunting in its complexity, this is the challenge posed by the President and Congress in reauthorizing the Elementary and Secondary Education Act (ESEA). The legislation seeks to make good on its promise through a substantial expansion of the federal role in education, particularly in the area of accountability. This paper reviews how the legislation will operate with respect to different groups of students and schools, and examines factors that could delay or dilute its guarantee of educational accountability for the academic achievement of all children.

As standardized testing has expanded, so has the list of well-intentioned arguments for excusing low achievement by whole categories of students. While special education law provides for testing with "accommodations," in practice it has pushed educators to focus more on procedural compliance than student outcomes. The achievement of language-minority students has often been overlooked or mismeasured as school districts lacked the skill or will to administer appropriate assessments. State laws have required charter schools to participate in statewide testing, but have largely treated accountability reporting as an afterthought.

The new law – the No Child Left Behind Act of 2001 (NCLB) – appears to mean business in all these cases: Its title leaves no room for ambiguity and, in a major expansion of the federal role, the Act requires annual testing; specifies a method for judging school effectiveness; sets a timeline for progress; and establishes a sequence of specific consequences in the case of failure. This paper examines four questions that will help determine whether the new law's ambitions will be achieved:

- What kinds of tests must be used and when?
- What students must take the tests and who is exempted?
- Whose scores count and how must they be reported?
- How do the Act's testing and Adequate Yearly Progress (AYP) requirements apply to different kinds of schools, including private schools, home schools, and charter schools?

[1] This paper was prepared for "Will No Child Truly Be Left Behind? The Challenges of Making This Law Work," a conference sponsored by the Thomas B. Fordham Foundation.

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The paper is divided into four sections. The first provides context on the law, its intent, and its implementation to date. The second section focuses on students, examining who gets tested and when and whose scores "count" for accountability purposes, with a particular focus on students with special needs. The third section focuses on the measurement of school performance and the applicability of accountability provisions to private, charter, and home schools. The final section offers conclusions and recommendations for policymakers.

THE EBB AND FLOW OF ACCOUNTABILITY REQUIREMENTS: NCLB IN THE CONTEXT OF THE LAST TWO ESEA REAUTHORIZATIONS

In order to understand how the law will affect students, it is important to understand its purpose and how it has evolved. The general intent of the ESEA has remained relatively unchanged since its enactment in 1965:

> *To ensure equal educational opportunity for all children regardless of socioeconomic background and to close the achievement gap between poor and affluent children by providing additional resources for schools serving disadvantaged students.*[2]

While the ends have remained constant, the means for measuring progress have changed over time. The 1988 reauthorization of ESEA established a new accountability system for Title I (then Chapter 1). Its Program Improvement provisions required local education agencies (LEAs) to identify schools with ineffective Chapter 1 programs on the basis of average individual student gains on annual standardized, norm-referenced tests, and to provide capacity-building support. While the Department of Education encouraged districts to establish additional desired outcomes, to be measured by criterion-referenced tests or other indicators, most stayed with the default option: average annual gains on norm-referenced tests.

The 1994 reauthorization of ESEA, the Improving America's Schools Act (IASA), reflected the national momentum toward standards-based reform. It also dealt with increasing concerns about reliance on a single test, including the likelihood that many schools were judged effective or ineffective on the basis of changes in test scores that were due to random fluctuations.[3] The IASA accountability provisions:

- Eliminated the annual testing requirement and replaced it with a requirement for testing in three grades (at least once within each of the following grade spans: 3-5, 6-9, and 10-12).
- Included a requirement that test scores be disaggregated by multiple categories, e.g., race, language proficiency and disability.

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[2] Generally, Public Law 107-110, section 1001.

[3] General Accounting Office, "Chapter 1 Accountability: Greater Emphasis on Program Goals Needed" (GAO/HRD-93-69, 1993).

- Removed federal guidelines for measuring annual school performance and minimum progress, instead requiring each state to define "how good is good enough" in terms of a school's Adequate Yearly Progress (AYP), resulting in many different approaches among the several states

In sum, IASA encouraged each state to create a coherent system of standards and accountability rather than a separate system for Title I students, while at the same time, allowing substantial variation from state to state. It also marked a departure from annual testing, thereby removing the federal incentive to track student progress over consecutive years. NCLB merges elements of the two prior reauthorizations: restoring the annual testing obligation of 1988 and retaining the standards-based emphasis of 1994.

NO CHILD UNTESTED? WHAT TESTS WHEN; WHO GETS TESTED; AND WHOSE SCORES COUNT?

NCLB expands federal testing requirements, eventually mandating annual testing for all public school students, but does not necessarily make all students' performance "count" for school accountability purposes.

What Tests When?

Left to their own discretion, states have created a broad array of approaches to measuring student performance. Some states test reading and math every year; others test only those subjects at three or four-year intervals, and others test a variety of subjects in a variety of grades.

One critical difference is whether states use *norm-referenced* or *criterion-referenced* tests (some favor one or the other, and some use both). Advocates of standards-based reform prefer the criterion-referenced variety because they can be directly aligned to a given state's standards. However, precisely because they are generally custom-fit for each state, they are far more expensive to create and produce results that are more difficult to compare from state to state.

An Emphasis on Criterion-Referenced State Tests. Like the 1994 law, NCLB encourages states to develop criterion- versus norm-referenced tests. The legislation requires that assessments be aligned to states' content and student academic achievement standards, and that states define benchmarks of proficiency. However, while the Act mandates annual testing by 2005-2006, it does not explicitly require states to administer the *same* test from year to year. Thus, states like Louisiana and Maryland that test students in grades three through eight with a mix of norm- and criterion-referenced tests may technically be in compliance, yet produce results that lack consistency over time. This arrangement may not pass federal muster, however, when states are asked to demonstrate AYP.

As to what subjects are tested, and when, states have some flexibility, particularly early on. Prior to 2005-2006, they must measure proficiency of mathematics and reading or language arts, and, as under the 1994 requirements, do this at least once during grades three through five, six through nine, and 10 through 12. Beginning in 2007-2008, states must also include science assessments at least once during each of these three grade spans. By 2005-2006, states must measure student achievement annually against state academic content and achievement standards in grades three through eight in mathematics and reading or language arts. So, by 2007, students will be tested annually from grades 3 to 8 in reading and math, tested twice in the elementary grades in science, and then in reading, math, and science at least once in grades 10-12. (States may also choose to add other subjects into the testing mix.)

Since definitions of "proficiency" can vary dramatically from state to state, beginning in the 2002-2003 school year, every state must also participate in biennial assessments of fourth- and eighth-grade reading and mathematics under the National Assessment of Education Progress (NAEP) – at least so long as Congress appropriates funds to underwrite such assessments.

Who Gets Tested?

NCLB extends federally mandated testing to a greater proportion of students than ever before by reaching all student groups, not just those served by Title I. Its testing requirements cover all public elementary and secondary education students, including students attending charter schools. As provided for under Section 1111(b) (3) (C) (i) of Title I, these assessments must "be the same academic assessments used to measure the achievement of all children." Further, state assessments must be disaggregated within each state, LEA, and school by student demographic subgroups, including:

- economically disadvantaged students;
- students with disabilities;
- students with limited English proficiency;
- major racial and ethnic groups; and
- gender

This provision attempts to rectify distortions and variations masked by the widespread reliance on schoolwide averages. For example, schools discovered that they could run up average test scores by allowing a liberal-leave policy for low achievers on test day. And districts found that they could garner good press by steering resources to high-achievers who could boost average test scores. NCLB addresses both problems by insisting that fully 95 percent of students be tested and tying incentives to the performance of disaggregated student groups.

This is cause for real celebration in the case of students with disabilities and those with limited English proficiency (LEP), segments of the national student population too often subject to what President Bush has called "the soft bigotry of low expectations." In the

past, when states were given the discretion to make their own exemption decisions, the result was widespread exclusion of students with disabilities from large-scale state and national assessments. Indeed, as recently as 1995, a review of state and national data collection programs found that, at the national level, 40 to 50 percent of school-age students with disabilities were estimated to be excluded from the most prominent national education data collection programs (e.g., National Assessment of Educational Progress).[4]

Reasons for such exemptions ranged from a desire to protect students with disabilities from the stresses of testing, to a lack of awareness of the availability of test modifications or accommodations, to an aversion to the difficulties of specialized test administration, to the desire to raise a school's average scores.[5] Whatever the impetus, the results were personally damaging not only to the many students improperly impeded from achieving and stigmatized by exclusion, but also to reform efforts in general. If students with disabilities do not participate in testing, there is no performance data to assess and therefore they cannot be meaningfully included in any resulting systemic reform. They get left behind.

Limited English proficient students with disabilities present a particularly complex set of problems, because language complicates the process of identifying their disability. Districts fearing misdiagnoses because of a language barrier may allow such students to remain in English as a Second Language (ESL) or other transitional classes for the maximum three years allowed under most state laws before they are assessed. Of the nation's 2.9 million students enrolled in programs for English Language learners, an estimated 184,000 have disabilities, according to the U.S. Department of Education.[6] NCLB's provisions to clarify the time frame for participation in ESL tracks, coupled with the expectation for 95 percent participation within student subgroups, should serve to mitigate this problem.

In any case, the good news is that NCLB unmistakably includes both students with disabilities and LEP students under its testing and accountability provisions, and reinforces prior federal requirements for reasonable accommodations needed to achieve that end. (Of course, the interpretation of "reasonable" remains subject to wide discretion and no one should expect rancorous disputes and lawsuits on this point to taper off.)

In the case of LEP students, the legislation goes so far as to require testing in English proficiency beginning in the 2002-2003 school year. This is a major departure from the 1994 law, and a clear signal of federal intent that achievement standards should apply to all students—and that everyone should become proficient in English.

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[4] See McGrew, Kevin, et al., "Why We Can't Say Much About the Status of Students With Disabilities During Educational Reform," NCEO Synthesis Report No. 21, National Center On Educational Outcomes, August 1995. Available at coled.umn.edu/NCEO/OnlinePubs/SynthesisReport21.htm. Inclusion rates varied significantly by state. Ibid.

[5] See Heubert, J.P. and Hauser, R.M., (Editors). (1998). "High Stakes: Testing for Tracking, Promotion and Graduation, Washington D.C.:" National Research Council, p. 193.

[6] Mary Ann Zehr. "Bilingual Students with Disabilities Get Special Help." Education Week: 7 November 2001.

Wisely, the bill's framers included a safety catch to ensure statistical significance and protect the identities of individual students when disaggregation creates very small student groups. For the purposes of determining Adequate Yearly Progress, or "AYP," such disaggregation "shall not be required in a case in which the number of students in a category is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student." This language is also used under Sec. 111(b) (3), which sets forth the requirements of state assessments.

It is unclear whether states, districts, or individual schools will have the final decision about whom to test (or not to test). The likely scenario will be that states will define the requirements and accommodations for state testing and districts and schools will be charged with implementing those guidelines faithfully. As this is addressed as part of the U.S. Department of Education's regulatory process, it is likely that the pre-existing civil rights laws governing special populations of students will drive the debate.

Whose Scores Count and How Must They be Reported?

Adequate Yearly Progress. While substantially all students must participate in state testing programs, not all students' scores will necessarily count equally in the alignment of incentives for improving school performance. The key question is whether scores are included in measuring "Adequate Yearly Progress," or AYP. NCLB provides a new federal definition of AYP that is more specific than the 1994 reauthorization while still preserving some state latitude:

- Each state, using data from the 2001-2002 school year, must establish a starting point for measuring the percentage of students meeting or exceeding the state's proficient level of academic achievement on the state assessments.[7]
- States must develop a 12-year timeline in which all students, within each of the "disaggregated" subgroups, will attain proficiency on the state assessments.
- States must develop annual measurable objectives that are consistent across schools and student subgroups and increase in equal increments over 12 years, with the first increase required to occur in not more than two years, and the remaining increases to occur in not more than every three years.
- States may establish a uniform procedure for averaging data over multiple years and across grades in a school.

The Act prescribes far more extensive consequences for failure to achieve AYP than in previous reauthorizations. However, unlike the universal testing requirement, which applies to all schools, those sanctions apply only to schools that receive funds under Title I.

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[7] In establishing this starting point, the state must use the higher of either the proficiency level of the state's lowest-achieving group or the proficiency level of the students in the school at the 20th percentile in the state, among all schools ranked by the percentage of students at the proficient level.

Reporting results. The legislation's public-accountability provisions are impressive. Beginning in the 2002-2003 school year, states must provide parents and the public with annual report cards, which include information on student achievement disaggregated by race, ethnicity, gender, disability status, English proficiency, socioeconomic status, and migrant status.

Taken together, the AYP and reporting provisions provide a new level of transparency about school performance[8], enabling parents, administrators, and public officials to make accountability more than a slogan. Yet a closer look reveals two potentially significant concerns:

First, since grade-level performance does not need to be monitored, schools can provide school-wide averages across grades rather than reports for all student subgroups in each grade. This makes sense; the matrix required to present every subgroup in every grade would be unwieldy. Yet without such reporting, schools can focus their energies on grades with higher achieving students -while ignoring grades with lower achieving students – and still increase their school average.

Second, and perhaps more serious is NCLB's perpetuation of the Law of Averages: making the schoolwide average of student proficiency the basic yardstick of progress. Although results will be disaggregated by student subgroups, reliance on this measure may discourage use of "value-added" analytical methods, which measure the impact of a school on the progress of individual students over time. States, however, have latitude in this area and there is reason for hope that such analytical methods will be used given that the NCLB provides permission and financial incentives for states to use such methods. The Act (in Title I, Part A, Section 1111, subsection 3B) states that: "*Each State educational agency may incorporate the data from the assessments under this paragraph into a State-developed longitudinal data system that links student test scores, length of enrollment, and graduation records over time.*" The Act also authorizes federal funding for states interested in developing longitudinally linked student databases (TitleVI, Part A, Section 6111).

Nevertheless, because the new federal definition of AYP encourages the analysis of *average* proficiency levels across student groups, the progress of *individual students* could be lost. While a problem for state and national policymakers, this weakness in the Act may undermine its utility most seriously at the school and district level. When there is no annual measurement of individual student performance over time, educators lack important data needed to evaluate their own work – to understand the "value added" by their efforts. Without student-level results, administrators can face chaos in evaluating the impact of teachers and schools. This is especially true when there is high student mobility (as in many urban systems), or in the case of newer charter schools, when entire grades of students are added from year to year. Comparisons of schoolwide averages can be misleading and uninformative when the composition of classes changes so dramatically from one year to the next.

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[8] It should be noted that Section 1116© also provides for LEAs to be identified as in need of improvement.

Arguably, the measurement of progress required by NCLB confuses the building for the kids. Without a focus on student progress over time, superintendents and state boards of education will be measuring the percentage of students at the proficient level and calculating the change from year to year – but the numbers will refer to the apples who were in the building last year versus the oranges there now. Judgments about school performance may have little to do with how a given cohort of students is actually affected by their schooling over time.

Implementation and Enforcement Matter. While the rhetoric of inclusion is promising, it will ring hollow if the bill is implemented poorly. The state and federal record on this issue is not encouraging. A Department of Education study of Title I, released seven years after the passage of IASA, found that, of the 34 states reviewed, 13 did not have adequate testing and accountability provisions for limited English proficient students; 10 had similar difficulties with disabled students; and 16 had difficulty in disaggregating the data as required.[9] Moreover, while few states have met the requirements of IASA even now, no state education agencies have been financially penalized for not complying with ESEA.[10]

If no child is to be left behind, states will have to meet a significant implementation challenge and the federal government will have to think anew about its own enforcement role. Traditionally, the federal role has been top-down and compliance-driven, a combination of Bad Cop and Federal Nanny. For example, the 1997 amendments of the Individuals with Disabilities Education Act (IDEA) paid lip service to outcomes-oriented accountability, but the Department of Education's regulations reverted to form. Commenting on the Department's enforcement system, analysts Patrick J. Wolf and Bryan C. Hassel said it is "flawed in design because, instead of replacing a rules-driven oversight process with a results-driven oversight system, it instead merely piles more rules regarding performance assessment into the previous process-based compliance system which remains largely intact but overwhelmed with paperwork."[11]

Among the mechanisms that might be explored to reach NCLB's inclusion goals are highly publicized annual rankings of how well states do in testing all subgroups; setting timelines with goals for improvement rather than the existing (rather mild) sanctions for

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[9]U.S. Department of Education, "High Standards for All Students: A Report from the National Assessment of Title I on Progress and Challenges Since the 1994 Reauthorization" (January 2001).

[10]Robelen, Erik W., "States Sluggish on Execution of 1994 ESEA." Education Week 28 November 2001. <www.edweek.com/ew/newstory.cfm?slug=13comply.h21>.

[11]Bryan C. Hassel and Patrick J. Wolf, "Effectiveness and Accountability in Special Education (Part 2): Alternatives to the Compliance Model." In Chester E. Finn, Jr., Andrew J. Rotherham, and Charles R. Hokanson, Jr., Eds. Rethinking Special Education for a New Century. Washington, DC: Thomas B. Fordham Foundation and Progressive Policy Institute, 2001: 309-334. Available: http://www.edexcellence.net/library/special_ed/special_ed_ch14.pdf.

failure; withholding only administrative funds rather than those that go to schools; and convening multi-state panels to help struggling states address technical problems.

APPLICABILITY OF NCLB ACCOUNTABILITY REQUIREMENTS TO DIFFERENT KINDS OF SCHOOLS

NCLB gives special consideration to private schools, home schools, and charter schools. In the case of charter schools, the Act presents some real challenges, as well as some latitude, for their accountability relationships with their sponsoring agencies.

Applicability to Private Schools and Home Schools

The testing and AYP requirements of the NCLB apply only to private schools (and then only to specific students) that receive funds or services under the Act. In contrast, home schools are totally exempted from the Act's provisions Section 9506 of the Act, pertaining to private, religious, and home schools, provides the following:

> *" (a) Applicability to Nonrecipient Private Schools.--Nothing in this Act shall be construed to affect any private school that does not receive funds or services under this Act, nor shall any student who attends a private school that does not receive funds or services under this Act be required to participate in any assessment referenced in this Act.*
>
> *" (b) Applicability to Home Schools.--Nothing in this Act shall be construed to affect a home school, whether or not a home school is treated as a home school or a private school under State law, nor shall any student schooled at home be required to participate in any assessment referenced in this Act.*
>
> *" (c) Rule of Construction on Prohibition of Federal Control Over Nonpublic Schools.--Nothing in this Act shall be construed to permit, allow, encourage, or authorize any Federal control over any aspect of any private, religious, or home school, whether or not a home school is treated as a private school or home school under State law. This section shall not be construed to bar private, religious, or home schools from participation in programs or services under this Act.*
>
> *" (d) Rule of Construction on State and Local Educational Agency Mandates.--Nothing in this Act shall be construed to require any State educational agency or local educational agency that receives funds under this Act to mandate, direct, or control the curriculum of a private or home school, regardless or whether or not a home school is treated as a private school under State law, nor shall any funds under this Act be used for this purpose.*

Funding of private-school programs must be on an equitable basis with all other children receiving Title I assistance. The LEA is required to consult with private school officials to determine how children's needs will be identified and what services will be offered; these can be provided either directly by the LEA, or through contracts with "public and

private agencies, organizations and institutions." With respect to testing, the consultation must cover "how the services will be academically assessed and how the results of that assessment will be used to improve those services." Private schools are given an explicit process of complaint to the state education agency if they believe the consultative process was not "meaningful and timely," but the state agency is provided no guidance on what sort of remedy to concoct.

The private school provisions seek to create the same incentives for testing and improvement as will exist for public schools, but stop well short of spelling out clear consequences in deference to the established tradition of federal noninterference in the curricula of private schools.

Applicability to Charter Schools

As public schools, charter schools are subject to the Act's testing and AYP requirements; however, specific language acknowledges their status as autonomous public schools operating under performance agreements with the agencies that authorize their charters, often referred to as *authorizers*. Depending on state laws, charter school authorizers may include state boards of education, colleges and universities, municipal bodies, special-purpose agencies, and most commonly, local school districts.

The legislation raises important questions about how charter schools should fit into the larger scheme of federal accountability requirements, because state laws grant authorizers the authority and responsibility to oversee and evaluate charter school performance and accountability according to measures set forth in their charter agreements. Because some authorizers are not local or state education agencies – those being the agencies forming the regulatory structure of NCLB – the legislation could potentially create confusion and redundancy in oversight roles or accountability requirements for charter schools.

To avoid such confusion, the NCLB maintains traditional federal deference to state law, stating simply that, "The accountability provisions under this Act shall be overseen for charter schools in accordance with State charter school law." The following report language amplifies the legislative intent:

> *"Charter schools are public schools and therefore subject to the same accountability requirements of this Act as they apply to other public schools, including Sections 1111 and 1116, as developed in each state. However, there is no intent to replace or duplicate the role of authorized chartering agencies, as established under each state's charter school law, in overseeing the Act's accountability requirements for the charter schools that they authorize. Authorized chartering agencies should be held accountable for carrying out their oversight responsibilities as determined by each state through its charter school law and other applicable state laws. This should be done in ways that do not inhibit or discourage the approval or oversight of innovative, high quality charter schools."*

Implementing this approach will take some doing. Given the wide variety of charter founding groups and school missions, authorizers and state officials face complex judgments in weighing these new federal provisions against existing federal and state laws, and against the charter contracts already executed. Areas of potential conflict include:

Aligning Timelines for Corrective Action. Authorizers will need to examine how charter school renewal decisions, which occur every three to five years in most states, will align – or perhaps clash -- with the federal timelines for improvement, which require states to denote equal annualized improvements over a 12-year period. For example, if a pre-existing charter school has a five-year charter and its state test scores warrant corrective action in year two under the Act's accountability provisions, what takes precedence?

Charter-Specific vs. State-Mandated Objectives. Authorizers will need to decide how to weigh a school's performance on charter-specific goals against its performance on a given state's test. If Public Service Charter School is meeting its objective of teaching life skills through service learning, but students are behind the state benchmark in mathematics how should the charter specific goals figure into accountability decisions?

Special Populations. Many charter schools go into business expressly to serve "at-risk" populations. Is it fair to apply AYP to a school serving a population of recent immigrants speaking Creole or Farsi? That school's charter may set forth a pedagogically sound timeline for student attainment of English proficiency, but it may not match the AYP framework. (In fact, the same point could be made about many traditional public schools as well.) And what about unusual learning settings such as "virtual" or "independent-study" charter schools?

Starting the Clock on Charter Schools and Applying Corrective Actions. Most charter schools are still in their startup-stage, with roughly half of all charter schools less than four years old. Since all new schools need time to get established, it may make sense to assess baseline performance levels after a school's first or second year. Authorizers will need to decide how much of a grace period is permissible, and when the "clock" for corrective action should start.

The Act also provides for a host of corrective actions that pose challenges for charter schools and their authorizers. In general, these corrective actions were designed with traditional schools and their districts in mind, not charter schools that may be treated as LEAs (the traditional designation of a school district) by states for grant purposes under some charter school laws. For example, in the 2002-03 school year, the Act provides for corrective actions for schools not meeting AYP that include, among other things, requiring the LEA to allow students attending such a school to choose another public school and for the school to develop an improvement plan to address AYP problems, as well as provide assurance that 10 percent of Title I funds will go toward professional development. The Act also requires LEAs to provide (or pay for) transportation and to use up to 5 percent of their Title I-A funds for such purpose. If a school again fails to make AYP, the LEA must, among other things, continue to provide public school choice

and use a prescribed portion of Title I funds to pay for supplemental services or transportation.

Each year a school fails to achieve AYP, corrective actions escalate, culminating in reconstitution or outsourcing the school's management. Not only may these corrective actions may be at odds with existing accountability agreements between charter schools and their authorizers, but the requirements for LEAs to fund specific remedies may fall on charter schools with LEA status or their authorizers (if the authorizer is itself an LEA).

It appears that states and charter school authorizers have considerable discretion in answering the questions and concerns raised above. Nevertheless, some of these issues will no doubt receive attention during the Education Department's regulatory process. As the implementation and regulatory processes unfold, it will be important to allow the accountability relationships between charter schools and their authorizers to develop without undue encumbrance. The quest for flexibility in these arrangements should not be viewed as an effort to evade accountability.

Rather, charter schools seek to find many paths to the same high standards sought for all other public schools. Under the new legislation, they may powerfully demonstrate the idea advanced by Paul Hill that setting fixed outcomes might serve to free schools to explore unique approaches to meeting those goals. Hill argues that, when we define public education as "a commitment to a goal of universal competency rather than a fixed set of institutions," we are required to continually search for the best way to educate children and open ourselves to the possibility that "any locality might pursue many different approaches."[12] It is possible that traditional school districts may learn a great deal from watching how charter schools use their freedom to pursue the new accountability goals. At the same time, we hope the law will not stifle charter schools' pursuit of success according to school-tailored measures beyond state-mandated AYP, as such other measures can also be greatly instructive for conventional school systems.

CONCLUSIONS

The No Child Left Behind Act of 2001 is a solid step in the direction of establishing a new nationwide commitment to the high academic achievement of all children. It is also underwritten by a bold expansion of the federal role in education.

The most obvious conclusion is that the law must be implemented well. The Department of Education should study and report in plain language on how well states and school districts fulfill these responsibilities. Special notice should be given to the provisions setting new test-taking targets, to ensure that the commendable goal of testing at least 95 percent of students is met and does not result in leaving behind the five percent most in need. In short, the key challenge for policymakers (at all levels of government) in

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[12]Hill, Paul T., "What is Public About Public Schooling?." in Terry M. Moe, ed., A Primer on America's Schools, Palo Alto, CA: Hoover Institution, 2001.

refining the NCLB will be in developing enforceable incentives without overburdening school leaders, while simultaneously ensuring that schools have the resources they will need to succeed.

A second imperative is to include a variety of stakeholders in the regulatory and enforcement processes, reflecting the myriad ways we now educate students. It is especially important that charter schools and authorizers be given the opportunity to create and demonstrate sound oversight regimes that follow federal policy while respecting state laws. One of the most promising educational reforms in decades should not be stifled by a bureaucratic, one-size-fits all approach to federal regulation.

Finally, the Department of Education should move to expand and strengthen the quality of data collected for accountability purposes. The measures contained in NCLB are not bad ones; indeed, they are an improvement over prior accountability schemes. By mandating annual testing of entire school populations, they create an opportunity, but not an obligation, to measure of the progress made by cohorts of students over time. The Department of Education will have ample opportunity through the regulatory process to signal its support for states' and districts' use of such "value-added" measures of school performance. Congress should back this up with enough funds so the Secretary can make grants to states that wish to develop longitudinal data systems.

After years of worry over what might happen in this round of ESEA reauthorization, and after months of horse-trading in which no side got all it wanted, Congress and the Administration have enacted legislation that keeps focused on standards of achievement and gives parents and the public new and meaningful tools for evaluating school performance. An interval of celebration is in order – but most of the tough decisions, and a huge task of implementation, still lie ahead.

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